

AMENDED IN ASSEMBLY AUGUST 18, 2005

AMENDED IN ASSEMBLY JUNE 21, 2005

AMENDED IN SENATE APRIL 13, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 435

Introduced by Senator Hollingsworth

February 17, 2005

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 435, as amended, Hollingsworth. Housing: density bonuses.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or the donation of land within the development if the developer meets certain requirements, including a requirement that the developer agrees to construct a specified percentage of the total units for specified income households or qualifying residents.

This bill would include within those eligibility requirements the construction of a mobilehome park that limits residency based on age requirements for housing for older persons and the construction, for persons and families of moderate income, of a community apartment project and a stock cooperative.

The local administrative requirements imposed by the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. It is the intent of the Legislature that local*
2 *governments encourage, to the maximum extent practicable, the*
3 *location of housing developed pursuant to Section 65915 of the*
4 *Government Code in urban areas with adequate infrastructure to*
5 *serve the housing.*

6 ~~SECTION 1.~~

7 *SEC. 2.* Section 65915 of the Government Code is amended
8 to read:

9 65915. (a) When an applicant seeks a density bonus for a
10 housing development within, or for the donation of land for
11 housing within, the jurisdiction of a city, county, or city and
12 county, that local government shall provide the applicant
13 incentives or concessions for the production of housing units and
14 child care facilities as prescribed in this section. All cities,
15 counties, or cities and counties shall adopt an ordinance that
16 specifies how compliance with this section will be implemented.

17 (b) (1) A city, county, or city and county shall grant one
18 density bonus, the amount of which shall be as specified in
19 subdivision (g), and incentives or concessions, as described in
20 subdivision (d), when an applicant for a housing development
21 seeks and agrees to construct a housing development, excluding
22 any units permitted by the density bonus awarded pursuant to this
23 section, that will contain at least any one of the following:

24 (A) Ten percent of the total units of a housing development for
25 lower income households, as defined in Section 50079.5 of the
26 Health and Safety Code.

27 (B) Five percent of the total units of a housing development
28 for very low income households, as defined in Section 50105 of
29 the Health and Safety Code.

1 (C) A senior citizen housing development as defined in
2 Sections 51.3 and 51.12 of the Civil Code, or mobilehome park
3 that limits residency based on age requirements for housing for
4 older persons pursuant to Section 798.76 or 799.5 of the Civil
5 Code.

6 (D) Ten percent of the total dwelling units in a common
7 interest development as defined in Section 1351 of the Civil
8 Code for persons and families of moderate income, as defined in
9 Section 50093 of the Health and Safety Code, provided that all
10 units in the development are offered to the public for purchase.

11 (2) For purposes of calculating the amount of the density
12 bonus pursuant to subdivision (f), the applicant who requests a
13 density bonus pursuant to this subdivision shall elect whether the
14 bonus shall be awarded on the basis of subparagraph (A), (B),
15 (C), or (D) of paragraph (1).

16 (c) (1) An applicant shall agree to, and the city, county, or city
17 and county shall ensure, continued affordability of all low-and
18 very low income units that qualified the applicant for the award
19 of the density bonus for 30 years or a longer period of time if
20 required by the construction or mortgage financing assistance
21 program, mortgage insurance program, or rental subsidy
22 program. Rents for the lower income density bonus units shall be
23 set at an affordable rent as defined in Section 50053 of the Health
24 and Safety Code. Owner-occupied units shall be available at an
25 affordable housing cost as defined in Section 50052.5 of the
26 Health and Safety Code.

27 (2) An applicant shall agree to, and the city, county, or city
28 and county shall ensure that, the initial occupant of the
29 moderate-income units that are directly related to the receipt of
30 the density bonus in the common interest development, as
31 defined in Section 1351 of the Civil Code, are persons and
32 families of moderate income, as defined in Section 50093 of the
33 Health and Safety Code, and that the units are offered at an
34 affordable housing cost, as that cost is defined in Section 50052.5
35 of the Health and Safety Code. The local government shall
36 enforce an equity-sharing agreement, unless it is in conflict with
37 the requirements of another public funding source or law. The
38 following apply to the equity-sharing agreement:

39 (A) Upon resale, the seller of the unit shall retain the value of
40 any improvements, the downpayment, and the seller's

1 proportionate share of appreciation. The local government shall
2 recapture any initial subsidy and its proportionate share of
3 appreciation, which shall then be used within three years for any
4 of the purposes described in subdivision (e) of Section 33334.2
5 of the Health and Safety Code that promote homeownership.

6 (B) For purposes of this subdivision, the local government's
7 initial subsidy shall be equal to the fair market value of the home
8 at the time of initial sale minus the initial sale price to the
9 moderate-income household, plus the amount of any
10 downpayment assistance or mortgage assistance. If upon resale
11 the market value is lower than the initial market value, then the
12 value at the time of the resale shall be used as the initial market
13 value.

14 (C) For purposes of this subdivision, the local government's
15 proportionate share of appreciation shall be equal to the ratio of
16 the initial subsidy to the fair market value of the home at the time
17 of initial sale.

18 (d) (1) An applicant for a density bonus pursuant to
19 subdivision (b) may submit to a city, county, or city and county a
20 proposal for the specific incentives or concessions that the
21 applicant requests pursuant to this section, and may request a
22 meeting with the city, county, or city and county. The city,
23 county, or city and county shall grant the concession or incentive
24 requested by the applicant unless the city, county, or city and
25 county makes a written finding, based upon substantial evidence,
26 of either of the following:

27 (A) The concession or incentive is not required in order to
28 provide for affordable housing costs, as defined in Section
29 50052.5 of the Health and Safety Code, or for rents for the
30 targeted units to be set as specified in subdivision (c).

31 (B) The concession or incentive would have a specific adverse
32 impact, as defined in paragraph (2) of subdivision (d) of Section
33 65589.5, upon public health and safety or the physical
34 environment or on any real property that is listed in the
35 California Register of Historical Resources and for which there is
36 no feasible method to satisfactorily mitigate or avoid the specific
37 adverse impact without rendering the development unaffordable
38 to low- and moderate-income households.

39 (2) The applicant shall receive the following number of
40 incentives or concessions:

1 (A) One incentive or concession for projects that include at
2 least 10 percent of the total units for lower income households, at
3 least 5 percent for very low income households, or at least 10
4 percent for persons and families of moderate income in a
5 common interest development.

6 (B) Two incentives or concessions for projects that include at
7 least 20 percent of the total units for lower income households, at
8 least 10 percent for very low income households, or at least 20
9 percent for persons and families of moderate income in a
10 common interest development.

11 (C) Three incentives or concessions for projects that include at
12 least 30 percent of the total units for lower income households, at
13 least 15 percent for very low income households, or at least 30
14 percent for persons and families of moderate income in a
15 common interest development.

16 (3) The applicant may initiate judicial proceedings if the city,
17 county, or city and county refuses to grant a requested density
18 bonus, incentive, or concession. If a court finds that the refusal to
19 grant a requested density bonus, incentive, or concession is in
20 violation of this section, the court shall award the plaintiff
21 reasonable attorney's fees and costs of suit. Nothing in this
22 subdivision shall be interpreted to require a local government to
23 grant an incentive or concession that has a specific, adverse
24 impact, as defined in paragraph (2) of subdivision (d) of Section
25 65589.5, upon health, safety, or the physical environment, and
26 for which there is no feasible method to satisfactorily mitigate or
27 avoid the specific adverse impact. Nothing in this subdivision
28 shall be interpreted to require a local government to grant an
29 incentive or concession that would have an adverse impact on
30 any real property that is listed in the California Register of
31 Historical Resources. The city, county, or city and county shall
32 establish procedures for carrying out this section, that shall
33 include legislative body approval of the means of compliance
34 with this section. The city, county, or city and county shall also
35 establish procedures for waiving or modifying development and
36 zoning standards that would otherwise inhibit the utilization of
37 the density bonus on specific sites. These procedures shall
38 include, but not be limited to, such items as minimum lot size,
39 side yard setbacks, and placement of public works
40 improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5

Percentage Low-Income Units	Percentage Density Bonus
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13

	Percentage Moderate-Income Units	Percentage Density Bonus
1		
2	19	14
3	20	15
4	21	16
5	22	17
6	23	18
7	24	19
8	25	20
9	26	21
10	27	22
11	28	23
12	29	24
13	30	25
14	31	26
15	32	27
16	33	28
17	34	29
18	35	30
19	36	31
20	37	32
21	38	33
22	39	34
23	40	35
24		

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in subdivision (b), “total units” or “total dwelling units” does not include units permitted by a density bonus awarded pursuant to this section or any local law granting a greater density bonus. The density bonus provided by this section shall apply to housing developments consisting of five or more dwelling units.

(h) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use

1 element of the general plan for the entire development, as
2 follows:

3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
	Percentage Very Low Income																						
		10																					
		11																					
		12																					
		13																					
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27 (2) This increase shall be in addition to any increase in density
28 mandated by subdivision (b), up to a maximum combined
29 mandated density increase of 35 percent if an applicant seeks
30 both the increase required pursuant to this subdivision and
31 subdivision (b). All density calculations resulting in fractional
32 units shall be rounded up to the next whole number. Nothing in
33 this subdivision shall be construed to enlarge or diminish the
34 authority of a city, county, or city and county to require a
35 developer to donate land as a condition of development. An
36 applicant shall be eligible for the increased density bonus
37 described in this subdivision if all of the following conditions are
38 met:

1 (A) The applicant donates and transfers the land no later than
2 the date of approval of the final subdivision map, parcel map, or
3 residential development application.

4 (B) The developable acreage and zoning classification of the
5 land being transferred are sufficient to permit construction of
6 units affordable to very low income households in an amount not
7 less than 10 percent of the number of residential units of the
8 proposed development.

9 (C) The transferred land is at least one acre in size or of
10 sufficient size to permit development of at least 40 units, has the
11 appropriate general plan designation, is appropriately zoned for
12 development as affordable housing, and is or will be served by
13 adequate public facilities and infrastructure. The land shall have
14 appropriate zoning and development standards to make the
15 development of the affordable units feasible. No later than the
16 date of approval of the final subdivision map, parcel map, or of
17 the residential development, the transferred land shall have all of
18 the permits and approvals, other than building permits, necessary
19 for the development of the very low income housing units on the
20 transferred land, except that the local government may subject
21 the proposed development to subsequent design review to the
22 extent authorized by subdivision (i) of Section 65583.2 if the
23 design is not reviewed by the local government prior to the time
24 of transfer.

25 (D) The transferred land and the affordable units shall be
26 subject to a deed restriction ensuring continued affordability of
27 the units consistent with paragraphs (1) and (2) of subdivision
28 (c), which shall be recorded on the property at the time of
29 dedication.

30 (E) The land is transferred to the local agency or to a housing
31 developer approved by the local agency. The local agency may
32 require the applicant to identify and transfer the land to the
33 developer.

34 (F) The transferred land shall be within the boundary of the
35 proposed development or, if the local agency agrees, within
36 one-quarter mile of the boundary of the proposed development.

37 (i) (1) When an applicant proposes to construct a housing
38 development that conforms to the requirements of subdivision (b)
39 and includes a child care facility that will be located on the

premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) “Child care facility,” as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(j) “Housing development,” as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, “housing development” also includes a subdivision or common interest development, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or

1 the substantial rehabilitation of an existing multifamily dwelling,
2 as defined in subdivision (d) of Section 65863.4, where the result
3 of the rehabilitation would be a net increase in available
4 residential units. For the purpose of calculating a density bonus,
5 the residential units do not have to be based upon individual
6 subdivision maps or parcels. The density bonus shall be
7 permitted in geographic areas of the housing development other
8 than the areas where the units for the lower income households
9 are located.

10 (k) The granting of a concession or incentive shall not be
11 interpreted, in and of itself, to require a general plan amendment,
12 local coastal plan amendment, zoning change, or other
13 discretionary approval. This provision is declaratory of existing
14 law.

15 (l) For the purposes of this chapter, concession or incentive
16 means any of the following:

17 (1) A reduction in site development standards or a
18 modification of zoning code requirements or architectural design
19 requirements that exceed the minimum building standards
20 approved by the California Building Standards Commission as
21 provided in Part 2.5 (commencing with Section 18901) of
22 Division 13 of the Health and Safety Code, including, but not
23 limited to, a reduction in setback and square footage
24 requirements and in the ratio of vehicular parking spaces that
25 would otherwise be required that results in identifiable,
26 financially sufficient, and actual cost reductions.

27 (2) Approval of mixed use zoning in conjunction with the
28 housing project if commercial, office, industrial, or other land
29 uses will reduce the cost of the housing development and if the
30 commercial, office, industrial, or other land uses are compatible
31 with the housing project and the existing or planned development
32 in the area where the proposed housing project will be located.

33 (3) Other regulatory incentives or concessions proposed by the
34 developer or the city, county, or city and county that result in
35 identifiable, financially sufficient, and actual cost reductions.

36 This subdivision does not limit or require the provision of
37 direct financial incentives for the housing development,
38 including the provision of publicly owned land, by the city,
39 county, or city and county, or the waiver of fees or dedication
40 requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) “Development standard” includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) “Maximum allowable residential density” means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide “onsite parking” through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives

1 or concessions beyond those provided in this section, subject to
2 subdivision (d).

3 ~~SEC. 2.~~

4 *SEC. 3.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 a local agency or school district has the authority to levy service
7 charges, fees, or assessments sufficient to pay for the program or
8 level of service mandated by this act, within the meaning of
9 Section 17556 of the Government Code.

O